

State of Vermont
Department of Labor
Montpelier

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SUBJECT: UI Treatment of Transportation Network Companies (TNCs)

The purpose of this Bulletin is to define, for unemployment insurance purposes, the relationship between Transportation Network Companies (TNCs) and the individuals who enter into Technology Services Agreements with the TNCs (drivers) in order for the drivers to use the TNC technology required to seek, receive, and fulfill requests by potential passengers for transportation services. A TNC is a company that, for a service fee, permits use of its web-based technology platform (mobile technology) to connect potential passengers with drivers using their personal non-commercial vehicles for transportation purposes.

When individual drivers enter into contracts with TNCs, the TNC provides the driver with services, including a smart phone application (app) that allows the driver to accept requests for transportation from individuals (users) in the driver's geographic vicinity, software, payment services, and related support services. Once a driver accepts a request, the driver becomes responsible for transporting the user. The user then pays the fare directly to the TNC, acting as the payment collection agent for the driver. The TNC agrees to remit payment to the drivers on a regular basis less the applicable service fee, tolls, taxes and ancillary fees, and other amounts that may have been agreed to between the driver and the TNC.

For unemployment insurance purposes, determining whether services performed by individual drivers in return for wages paid by TNCs constitute "employment" requires VDOL to apply the statutory test known as the ABC test:

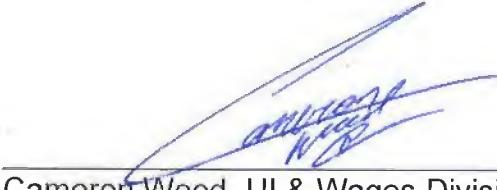
21 V.S.A. § 1301(6)(B): Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the Commissioner that:

- (i) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact; and
- (ii) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and
- (iii) Such individual is customarily engaged in an independently established trade, occupation, profession, or business.

As a general rule, services performed by drivers for TNCs will NOT be considered employment, either for assessing unemployment contributions or calculating monetary eligibility for benefits. The reasoning for this is as follows:

- (i) The TNC does not exercise direction and control over the driver. Drivers access the TNC's driver app when they choose to, and are free to work as much or as little as they wish. Drivers have autonomy over whether to accept a request for service. The TNC has no ability to demand that particular passengers be serviced by one driver over another. Drivers decide when, where, and how to accept and perform requests through their own entrepreneurial decision making process, and have no direct or indirect supervision from the TNC. Drivers are free to work for multiple TNCs that compete directly with each other.
- (ii) The usual course of the TNC's business is the provision of a technology platform to its drivers, in exchange for a service fee. The TNC is not in the business of owning or operating a fleet of vehicles for the purpose of providing transportation for hire to the general public.
- (iii) Individuals that drive for TNCs are customarily engaged in an independently established trade or business, in that they own the tools or equipment (in this case, a passenger motor vehicle) necessary to engage in the business of transporting passengers, maintain their own driver's license and insurance, and are free to offer their services to as many TNCs as they choose to.

Field auditors and claims adjudicators are reminded that all individual determinations are fact-specific, and the mere fact that a business holds itself out as a TNC is not dispositive. Additional fact-finding may be necessary to determine that a particular business is in fact a legitimate TNC, and not a taxi or livery service posing as one for purposes of avoiding unemployment insurance contributions.



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